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Language Legislation and Policy in the UK and Ireland: Different Aspects of Territoriality in a ‘Celtic’ Context

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A considerable number of languages are spoken in the United Kingdom (UK) and the Republic of Ireland, including several, other than English, which are indigenous to the British Isles. These languages benefit from the protection of international treaties which have been entered into by the UK, and three of the Celtic languages, Irish, Welsh and Scottish Gaelic, benefit from the protection of a range of legislative enactments in the Republic of Ireland, Wales and Scotland, respectively, including at least one major piece of legislation directed solely at the language in question.¹ In the case of each of these languages, the state has also developed significant language policies for the support of those languages and their speakers. This paper will focus on two of those languages, Irish and Scottish Gaelic, which are closely related to each other and which share some demographic similarities, but in respect of which somewhat different approaches to the question of territoriality are taken. After considering contextual matters such as the way in which the concept of ‘territoriality’ will be employed in this paper and the important issue of demographics, the international legal context and then the main domestic legislation and most important domestic policy documents in relation to Irish and Scottish Gaelic will be examined.

1. The Concept of Territoriality

The concept of territoriality in relation to language legislation in general and language rights in particular is sometimes used in a variety of ways, and as Patten and Kymlicka have noted,

¹ The Irish language also receives protection in Northern Ireland, mainly under international treaties, which are discussed below. There is, however, still no language legislation for Irish in Northern Ireland, and only a small amount of legislation, mainly secondary rather than primary legislation, most in respect of Irish medium education. Given this, Irish in Northern Ireland will generally not be examined in this article.

the term is often used in contradistinction to the concept of ‘personality’, and usually in the context of official language rights regimes.² They characterise the ‘personality principle’ as being one under which citizens should enjoy the same set of language rights—or other statutory or policy protection—wherever they are in the country. They characterise the ‘territorial principle’, on the other hand, as one under which the language rights—or other statutory or policy protection—which the citizen enjoys will vary from region to region, according to local conditions, with the result that the protection the citizen enjoys under legislation or policy depends on what part of the territory of the state in which the citizen finds her- or himself (ibid).

In this paper, the concept of territoriality will be used in the sense defined by Patten and Kymlicka. In particular, the question of whether the protection afforded by key treaties, domestic legislation and important policy documents to the Irish, Welsh and Scottish Gaelic languages and their speakers differs, based on where in the territory such speakers find themselves.

2. Demographics of the Irish and Scottish Gaelic Languages

As we shall see, the concept of territoriality is employed in relation to both of the languages examined in this article, but in somewhat differing ways and to a somewhat different extent. Both the similarities and differences are explained in part by the demographic context of the languages. Both are minoritised languages, in the sense that they were once much more widely spoken than they are today, and that they are now spoken by only a minority, and in the case of Scottish Gaelic, a small minority of the population of the countries with which they are associated.

² A. Patten and W. Kymlicka, ‘Introduction: Language Rights and Political Theory: Context, Issues, and Approaches’, in W. Kymlicka and A. Patten (eds.), *Language Rights and Political Theory* (Oxford University Press, Oxford, 2003) p. 29.

Irish was at one point spoken throughout the territory of what is now the modern nation, and was the only language spoken by the overwhelming majority of the population. Even by the turn of the nineteenth century, Irish was believed to be spoken by a majority of the population; the nineteenth and twentieth centuries have been the ones in which perhaps the sharpest decline in numbers of speakers has taken place.³ The decline in numbers was accompanied by a spatial retraction, with the areas in which the language was spoken by a majority of the local population also receding. Thus, the language is now closely associated with a shrunken linguistic ‘heartland’, ‘An Ghaeltacht’ (literally, the Irish-speaking area). The idea of the Gaeltacht as a repository of not simply the Irish language but a type of idealised Irishness had considerable appeal for many language revivalists and nationalists of the late nineteenth and early twentieth centuries,⁴ and as we shall see, the Gaeltacht, as a territorially defined, Irish-speaking space within the Irish state, continues to have an impact on policy. However, the sense that Irish is a ‘national’ language—a language once spoken by the overwhelming majority of the population, and which give expression to a fundamental part of the national identity—is also strong, with the result that language policy for Irish could never be territorially limited to the present linguistic ‘heartlands’. In Scotland, a somewhat different dynamic exists. Although the Scottish Crown in the early middle ages was a Gaelic-speaking one, and although place-name and other evidence suggests that Gaelic was once spoken over most, though not all, of Scotland, the language was displaced at court in the eleventh century, and by the late middle ages it was associated mainly with ‘the Highlands’, the mountainous area which covers most of the north of the country above the

³ See T. Ó hÍfearnáin, ‘Irish-Speaking Society and the State’, in M. J. Ball and N. Muller, *The Celtic Languages* 2nd ed. (Routledge, London, 2010) pp. 539–41. According to some estimates, slightly over half the population of Ireland spoke Irish at the start of the nineteenth century. For a comprehensive overview, see, for example, A. Doyle, *A History of the Irish Language: From the Norman Invasion to Independence* (Oxford University Press, 2015).

⁴ See, for example, D. Kiberd, *Inventing Ireland: The Literature of the Modern Nation* (Vintage, London, 1995), especially ch. 8.

central belt stretching from Glasgow to Edinburgh and up the east coast of the country. The idea that Scotland was a land of two peoples—Gaelic-speakers in the Highlands, and Scots- (a Germanic language, closely related to English) or English-speakers in the Lowlands, was firmly established by the fifteenth century, and for a long time thereafter—and arguably until fairly recently—Gaelic was viewed with suspicion and even at times with hostility by non-Gaelic-speakers.⁵ Unlike Irish, Gaelic was already a minority language in Scotland by the start of the eighteenth century,⁶ but like Irish, numbers of Gaelic-speakers have declined—even more precipitously than is true of Irish—particularly (again) in the nineteenth and twentieth centuries, and the majority Gaelic-speaking areas have also receded quite dramatically. However, because of this rather different history, Gaelic has always been associated with a particular territory within Scotland, and the idea of Gaelic as ‘the’ national language, or even ‘a’ national language, has been contested, at best, although recent research suggests that, to the extent that such attitudes did once prevail, they have now changed quite considerably.⁷

With regard to contemporary law and policy for these languages, it is also important to bear in mind present numbers and distributions of speakers, and here we see that Irish is in a much stronger position than Gaelic. According to the 2011 Irish census, about 1.77 million in the Republic of Ireland claimed to speak Irish, representing a little over 41 percent of the population. However, the census also provides data on the frequency with which Irish is used, and only 77,185 respondents claimed to use Irish on a daily basis outside of the school

⁵ For a good introduction, see K. MacKinnon, *Gaelic: A Past and Future Prospect* (The Saltire Society, Edinburgh, 1991), especially Part I.

⁶ A rough estimate of the Gaelic-speaking population in the year 1806 was just less than 300,000 people, representing 18.5 per cent of the Scottish population of 1.6 million: C. W.J. Withers, *Gaelic in Scotland, 1698-1981: The Geographical History of a Language*, (John Donald, Edinburgh, 1984) p. 83.

⁷ Research based on data revealed in the 2012 Scottish Social Attitudes Survey shows that 76 per cent of respondents felt that Gaelic was very important or fairly important to Scottish heritage and identity, but that only 14 per cent felt that the ability actually to speak Gaelic was very or fairly important for being ‘truly Scottish’: L. Paterson, F. O’Hanlon, R. Ormston and S. Reid, ‘Public Attitudes to Gaelic and the Debate about Scottish Autonomy’, 24:4 *Regional & Federal Studies* (2014) p. 438.

system.⁸ As we shall see in Part 4, below, the Gaeltacht is now statutorily defined, and in these areas, Irish-speakers are in the majority: in 2011, of 96,628 residents, 66,238, or 69.5 per cent, claimed to speak Irish, and 23,621 claimed to use Irish daily outside the education system,⁹ representing 30.6 per cent of all daily users of Irish in Ireland. While recent research indicates that the Irish language is in an extremely vulnerable position in the Gaeltacht,¹⁰ these areas still represent important core areas of Irish speech.

With respect to Scottish Gaelic, the 2011 UK census indicated that there were 58,003 Gaelic-speakers in Scotland, representing about 1.1 per cent of Scotland's population of 5,295,403; although the census did not have a question on daily use of the language, it did have one on whether Gaelic was used at home, and 25,540 indicated that it was.¹¹ However, Gaelic is spoken by a majority of the population in only one of Scotland's 32 local authorities, Na h-Eileanan Siar (the Western Isles, or Outer Hebrides, as they are also known), where 14,169 people reported themselves as Gaelic-speakers, representing a bare majority of 51.2 per cent of the population, 11,048 of whom reported that they speak Gaelic at home. There are significant numbers of Gaelic-speakers in two other local authority areas which form part of the historical Highlands, Highland, where there were 12,169 Gaelic-speakers, representing 5.2 per cent of the population, and Argyll and Bute, where there were

⁸ 516,181 people claimed to use Irish daily but only within the school system, the large majority of them being primary and secondary students, and this is a reflection that studying Irish, at least as a subject, remains a core part of the curriculum in Ireland. Census 2011—This is Ireland, Tables 33A and 33B, available on-line at <www.cso.ie/en/census/census2011reports/census2011thisisirelandpart1>.

⁹ *Ibid*, Table 35.

¹⁰ C. Ó Giollagáin, S. Mac Donnacha, F. Ní Chualáin, A. Ní Shéaghda, and M. O'Brien, *Comprehensive Linguistic Study of the Use of Irish in the Gaeltacht: Principal Findings and Recommendations* (The Department of Community, Rural and Gaeltacht Affairs, Dublin, 2007), available on-line at <www.udas.ie/wp-content/uploads/2014/01/Comprehensive-Linguistic-Study-of-the-Use-of-Irish-in-the-Gaeltacht.pdf>. The report was updated with further data for the period 2006-2011, which confirmed trends indicated in the 2007 report, but which is available only in Irish: <www.udas.ie/en/an-ghaeilge-an-ghaeltacht/an-proiseas-pleanala-teanga>.

¹¹ Table AT_285_2011, Scotland's Census 2011: Gaelic Report (part 2), 29 October 2015, National Records of Scotland, available on-line at <www.scotlandscensus.gov.uk/documents/analytical_reports/Report_part_2.pdf>. Tables AT_234_2011 to AT_290_2011 are also available on-line at <www.scotlandscensus.gov.uk/ods-web/data-warehouse.html#additionaltab>.

3,487 Gaelic-speakers, representing 4.0 per cent of the population,¹² and in a few communities in each area, notably the Isle of Skye in Highland and Tiree and, to a lesser extent, Islay in Argyll and Bute, there are still some significant concentrations in some areas. However, the census also revealed that almost half of Gaelic speakers, 48.6 per cent, lived outside of these three historically Gaelic-speaking local authority areas, with significant numbers in the City of Glasgow (5,973 Gaelic-speakers, representing 1.0 per cent of the population) and in Edinburgh, the capital (3,191 Gaelic-speakers, representing 0.7 percent of the population),¹³ and in both cities, there have been signs of vitality, including Gaelic-medium education.¹⁴ Thus, in spite of the obvious importance of the few remaining, and highly vulnerable, ‘heartlands’, Gaelic policy-makers must also consider the needs and development possibilities in places such as Glasgow and Edinburgh, and this awareness is, as we shall see, also reflected in law and policy.

3. The International Legal Framework

There are a large number of international treaties which make at least some provision for speakers of minority languages, the two most important of which are both treaties of the Council of Europe: the Framework Convention for the Protection of National Minorities (FCNM), and the European Charter for Regional or Minority Languages (ECRML). With regard to the application of the treaties, the FCNM does not define the concept of ‘national minority’, and the Advisory Committee, the body established under the FCNM to monitor its implementation, has generally taken the position that it is for the states parties themselves to

¹² *Ibid.*

¹³ *Ibid*, Table AT_236_2011.

¹⁴ There is a Gaelic-medium primary school in both Glasgow and Edinburgh, one of only four such schools in Scotland at present, with a second primary school to open in Glasgow. The Glasgow school is the only school in Scotland to offer a wide range of courses through the medium of Gaelic at secondary level.

determine the scope of application of the treaty.¹⁵ By contrast, the ECRML defines explicitly in Article 1, paragraph a, the ‘regional or minority languages’ to which the treaty applies. They are languages “used traditionally within a given territory of a State” by nationals of the state who form a group numerically smaller than the rest of the state’s population, and that are different from the official language or languages of the state. The concept of ‘traditional use’ is ambiguous, although the explanatory report notes that these are languages “which have been spoken over a long period in the state” (para. 32). The concept of territoriality is, however, central to the definition; as the explanatory report also notes, the languages covered by the treaty are primarily ones which are traditionally used in a particular geographical area (para. 33). Indeed, the concept of the territory in which a regional or minority language is used is further defined in Article 1, paragraph b of the ECRML, as the geographical area in which the language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in the ECRML. The explanatory report adds that this territory is “where a regional or minority language is spoken to a significant extent, even if only by a minority”, and which “corresponds to its historical base”, and notes that it is up to each state to define more precisely, “in the spirit” of the ECRML, the notion of a language’s territory (para. 34).

The concept of territoriality is also deeply embedded in the substantive provisions of both treaties. For example, the FCNM contains a variety of provisions which allow for the use of languages of national minorities, but which apply only “in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers”. These include Article 10, paragraph 2, in relation to the use of minority languages in dealing with the administrative authorities, or Article 11, paragraph 3, in relation to the displaying by state

¹⁵ R. Hofmann, ‘The Framework Convention for the Protection of National Minorities: An Introduction’, in M. Weller (ed.), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford University Press, Oxford, 2005) p. 16.

authorities of traditional local names, street names and other topographical indications intended for the public, and Article 14, paragraph 2, in relation to the provision by the state of minority language education. The explanatory report notes that the drafters of the FCNM refrained from attempting to define such areas in the treaty itself on the basis that it was preferable “to adopt a flexible form of wording which will allow each Party’s particular circumstances to be taken into account”; it also notes that the term ‘inhabited . . . traditionally’ did not refer to “historical minorities, but only to those still living in the same geographical area”, creating the possibility that so-called new minorities—those which have resulted from more recent migration—may benefit from these provisions (para. 66).

We see a very similar approach taken in the ECRML. Article 7, in Part II of the treaty, sets out the general objectives and principles on which states must base their policies, legislation and practice in respect of all of their regional or minority languages (Article 2, paragraph 1); however, those objectives and principles only apply “within the territories in which such languages are used”, the concept defined in Article 1, paragraph b, discussed earlier. Part III of the ECRML sets out much more detailed provisions, but these only apply in respect of those regional or minority languages designated by the state, and the state also has a considerable amount of discretion on which provisions in Part III apply: they need only designate 35 paragraphs or subparagraphs out of 65 possible choices (Article 2, paragraph 2). However, many of the most important provisions in Part III also territorially limit the obligations of the state. For example, Article 8, paragraph 1 provides for a range of commitments in relation to minority language education at the pre-school, primary, secondary and tertiary levels; however, these only apply “within the territory in which such languages are used”. The obligations set out in Article 11, paragraph 1 in relation to minority language radio and television broadcasting, audio and audio-visual production and distribution, and print media are similarly territorially limited, as are those in Article 12,

paragraph 1 in relation to cultural activities and facilities such as libraries, cultural centres, museums, archives, theatres and cinemas, and in Article 13, paragraph 2 in relation to certain economic and social activities. Article 9, paragraph 1 contains a range of obligations relating to the use of minority languages in criminal, civil and administrative proceedings, and Article 10, paragraph 1 contains a number of provisions in relation to the use of minority languages in dealing with the administrative authorities and in receiving public services. In both cases, though, the obligations are territorially limited, to those judicial districts, on the one hand, and administrative districts, on the other, in which ‘the number of residents using the regional or minority languages justifies the measures’ set out in the respective paragraphs.

The UK has ratified both of these treaties. In its initial state report under the FCNM to the Advisory Committee,¹⁶ the UK noted that there was no definition of ‘national minority’ in British law, and that it would therefore determine the application of the FCNM based on the definition of racial group as set out in the *Race Relations Act 1976* which, it noted, defines a racial group as “a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origins”. The report added that this definition includes “our ethnic minority communities (or visible minorities) and the Scots, Irish and Welsh”. No distinction is made, however, between those Scots, Irish and Welsh who speak their respective Celtic language and those who do not. With respect to its obligations under Article 10, paragraph 2, Article 11, paragraph 3, and Article 14, paragraph 2, all described briefly above, the UK has in effect defined the territory of the Celtic languages, and therefore the territory in which it owed obligations to speakers of those languages, as being Scotland, Wales, and Northern Ireland (UK State report, 1999, paras. 159-62, 169-71, and 198-203). With respect to the ECRML, the UK has recognised that there are seven ‘regional or minority languages’ for

¹⁶ Report Submitted by the United Kingdom pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 26 July 1999, Council of Europe document ACFC/SR(1999)013.

which the UK is responsible, including five Celtic languages—Welsh, Scottish Gaelic, Irish, Manx (a Celtic language closely related to Irish and Scottish Gaelic and spoken on the Isle of Man), and Cornish (a Celtic language closely related to Welsh and Breton, and spoken in Cornwall)—and two Germanic languages—Scots, spoken in Scotland, and Ulster-Scots, spoken in Northern Ireland. The UK designated three languages, Welsh, Scottish Gaelic, and Welsh for the special protection of Part III of the ECRML. Although the UK has not specifically addressed the question of what constitutes the territory of these languages, it is quite clear from the UK’s first state report¹⁷ and subsequent state reports that, in relation to the relevant provisions of Part III, described above, the UK once again generally views the territory of Welsh to be Wales, Scottish Gaelic to be Scotland, and Irish to be Northern Ireland.

The Republic of Ireland has ratified the FCNM but has thus far refused to ratify the ECRML; it appears that its reason for doing so is that the recognition of Irish as a ‘regional or minority language’ would be inconsistent with the status of the language as conferred under the Irish Constitution of 1937,¹⁸ Article 8, paragraph 1 of which provides that “[t]he Irish language as the national language is the first official language”.¹⁹ With regard to the FCNM, the Irish government noted in its first state report to the Advisory Committee that Ireland—like the UK—has no definition of ‘national minority’ in its law, but also related that in a range of legislative, administrative and institutional provisions, recognition has been given to Ireland’s Traveller community, and that there were in Ireland a range of groups—essentially, those resulting from relatively recent immigration—“which do not constitute national

¹⁷ United Kingdom, Initial Periodical Report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter, 1 July 2002, Council of Europe document MIN-LANG/PR (2002) 5.

¹⁸ Bunreacht na hÉireann / Constitution of Ireland, 1 July 1937; available on-line at <http://www.taoiseach.gov.ie/eng/Historical_Information/The_Constitution>.

¹⁹ Under Article 8, paragraph 2, the English language is recognised as “a second official language”: Bunreacht na h-Éireann/Constitution of Ireland, 1937, available on-line at <www.taoiseach.gov.ie/eng/Historical_Information/The_Constitution/February_2015_-_Constitution_of_Ireland.pdf>.

minorities may nevertheless benefit from the protection of the Framework Convention on an article-by-article basis”.²⁰ With regard to Irish speakers, the first periodic report was somewhat equivocal. It noted that, in spite of the constitutional status of the language as the first official language of the state, “it is used as a vernacular only by a minority of the population as a whole and, in particular, in a number of areas located throughout the country designated officially as Irish speaking districts (the Gaeltacht)”,²¹ and also made reference to “the continued policy of successive Governments to revive the Irish language ensure that their rights [i.e. those of Irish speakers] are protected”.²² The report noted that further information is provided in relation to Irish in respect of Articles 5, 10 and 14.

With respect to Article 10, the Irish language was mentioned only in relation to paragraph 1, which provides that “[t]he Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing”, a provision whose application is not, unlike paragraph 2, limited to particular territories within the state. In spite of this, the report’s commentary was directed primarily at provision for Irish speakers within the Gaeltacht. The report noted that there was a government minister “charged with the promotion of the cultural, social and economic welfare” of the Gaeltacht, but also “with encouraging the preservation of Irish as a vernacular language”, and that the minister’s department “promotes a number of schemes designed to help foster the Irish language *not only in the Gaeltacht but also in the country in general*” (emphasis added). It also noted that the minister has responsibility for two organisations, Údarás na Gaeltachta, which is “primarily concerned with the promotion of industrial and economic development” in the Gaeltacht, and An Foras Teanga, a language body one of whose two agencies, Foras na

²⁰ Report Submitted by Ireland pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 13 November 2001, Council of Europe Document ACFC/SR(2001)006, p. 5.

²¹ *Ibid*, p. 17.

²² *Ibid*, p. 7.

Gaeilge, “is charged with the promotion of Irish as a living language throughout the country”.²³ In spite of the reference to Article 14, the state report simply refers the reader back to the introductory section of the report, as well as its comments on Articles 5 and 10. In the introductory section, the report did note that “[t]eaching of the Irish language is a requirement of the education curricula at primary and secondary levels”.²⁴ To conclude, it seems that, by making reference to the Irish language at all, the state seems to accept that Irish speakers may amount to a ‘national minority’. However, there is relatively little information provided on the very significant domestic legislative and policy framework, some of which will be discussed below. And, although the report seems to accept that there is a territory associated with the language, the Gaeltacht, it also highlights that provision for Irish is not limited to that area, and that therefore the Irish language is a matter which has both territorially-specific elements and those that are national in scope. This, as we shall see in the next section of this paper, is a reflection of Irish law and policy.

4. Irish in Ireland

As has already been discussed, the Irish language is recognised under the Irish Constitution of 1937 as the ‘national’ and ‘first official’ language of the Republic of Ireland as a whole. In a famous speech broadcast on the national broadcaster, RTÉ, on St. Patrick’s Day, 1943, Éamon de Valera, the Irish Taoiseach (effectively, the prime minister) who had presided over the drafting of the 1937 Constitution, described the Irish language as the first of those things which mark the Irish out as a ‘distinct nation’, and argued that “[t]he restoration of the unity of the national territory and the restoration of the national language are the greatest of our uncompleted national tasks”.²⁵ While the practical implications of what constitutes

²³ *Ibid*, p. 72.

²⁴ *Ibid*, p. 18.

²⁵ M. Moynihan (ed.). *Speeches and statements by Eamon De Valera: 1917–73* (Gill & Macmillan, Dublin, 1980), p. 468. See also <<http://www.rte.ie/archives/exhibitions/eamon-de-valera/719124-address-by-mr-de-valera>>.

‘restoration’ have never been entirely clear, language policy was clearly understood by de Valera to be a national rather than a regional or territorial issue—in that same 1943 speech, de Valera referred to the restoration of Irish “as the everyday speech of our people”, while also noting that it was a task “as great as any nation ever undertook”.²⁶ There has, however, been a consistent recognition of the particular importance of the Gaeltacht. Although there have been differences, it has been argued by one of the leading scholars of Irish language policy, Dr Tadhg Ó hIfearnáin, that there has been an underlying continuity in that policy from the 1920s to the present, which he describes as follows:

[T]here is a desire to enable the whole population to learn and preferably speak Irish, the only indigenous language of the nation once spoken by the great majority, and to stop the Gaeltacht from disappearing entirely as an Irish-speaking or bilingual community.²⁷

As Ó hIfearnáin and others have noted, however, there is a paradox at the heart of policy in that Irish is, as discussed above, from a sociolinguistic perspective a minority language, but from a legal and policy perspective does not really enjoy a minority status—comments in the Irish state reports under the FCNM notwithstanding—as the state treats it as “the real native language of all Irish citizens”.²⁸ One result has been that, although the state has taken measures since the founding of the Irish state to support the Irish language, notably through the teaching of the language in effectively all schools in the republic, the language has generally been given only a very minor place in the public administration, and, until the *Official Languages Act 2003*, there was no comprehensive legislation specifically directed at the Irish language.

The recognition of the Gaeltacht as an area of particular importance for the language has existed since the foundation of the Irish Free State in 1922. In 1925, the Irish government

²⁶ *Ibid.*

²⁷ Ó hIfearnáin, *supra*, note 3, p. 545.

²⁸ *Ibid.*, p. 546. See also, for example, V. Ní Dhrisceoil, ‘Antipathy, paradox and disconnect in the Irish state’s legal relationship with the Irish language’, 55 *Irish Jurist* (2016) pp. 49-51.

established Coimisiún na Gaeltachta (the Gaeltacht Commission) to examine the state of the language in those areas in which there had been a concentration of Irish speakers in the 1911 Census. It reported in 1926, and made recommendations on the boundaries of both the ‘Fíor-Ghaeltacht’ (the ‘true’ Gaeltacht), districts in which at least 80 per cent of the population was Irish-speaking, and the ‘Breac-Ghaeltacht’ (‘dappled’, or ‘partial’ Gaeltacht), in which less than 80 but more than 20 per cent of the population was Irish-speaking. These areas were not statutorily defined, however, until 1956, as a result of the *Ministries and Secretaries (Amendment) Act, 1956*.²⁹ The act created a department in the Irish government called the Department of the Gaeltacht (subsection 3(1); now the Department of Community, Rural and Gaeltacht Affairs) having the functions of promoting “the cultural, social and economic welfare of the Gaeltacht”, encouraging “the preservation and extension of the use of Irish as a vernacular language”, and consulting and advising other departments in respect of services administered by them “which affect the cultural, social or economic welfare of the Gaeltacht or which concern the national aim of restoring the Irish language” (subsection 3(2)), and also created a Minister of the Gaeltacht who was in charge of the new department (subsection 3(3)). The Gaeltacht was defined as areas determined by statutory order of the Irish government to be “Gaeltacht areas”. The first such order, the Gaeltacht Areas Order, 1956³⁰ was published shortly after the act came into effect, and set out in considerable detail areas primarily in the extreme west of the country, in the counties of Kerry, Cork, Donegal, Galway, Mayo and, in the south-east of the country, Waterford. The contours of the Gaeltacht have subsequently been redefined (although never in a major way) in several subsequent

²⁹ No. 21 of 1956, available on-line at <www.irishstatutebook.ie/eli/1956/act/21/enacted/en/print#sec2>.

³⁰ Statutory Instrument No. 245 of 1956, available on-line at <www.irishstatutebook.ie/eli/1956/si/245/made/en/print>.

Gaeltacht Area Orders been revised on several occasions thereafter, most notably by the addition of a small area in the central county of Meath.³¹

Despite the reference in the 1956 legislation to encouraging the preservation and extension of the use of Irish as a vernacular language—it is important to recognise that this duty was not limited to the Gaeltacht alone—the overriding concern was with the economic weakness and underdevelopment of the Gaeltacht, resulting in an ongoing loss of population. Indeed, for many policy-makers, addressing this economic underdevelopment and population loss was considered to be the primary task in ensuring the survival of Irish in the Gaeltacht—the approach was neatly summed up by the aphorism “no jobs, no people; no people, no Gaeltacht; no Gaeltacht, no language”, attributed to one Minister for the Gaeltacht.³² Ó hIfearnáin summarises the position as follows:

State policy in the Gaeltacht is based on economic planning, be that the development of agriculture before 1956 or the creation of local industry and the attraction of foreign manufacturers since that time. There has been little or no direct

Indeed, in 1957, shortly after the creation of the new Department of the Gaeltacht, the government created Gaeltarra Éireann, whose duties included carrying on, controlling and managing the ‘rural industries’ (industries which had been administered by the Department of the Gaeltacht up to that time) providing, carrying on, controlling and managing in the Gaeltacht “such other industries and productive schemes of employment as it may think fit”,³³ and encouraging “the preservation and extension of the use of Irish as a vernacular

³¹ Gaeltacht Areas Order, 1967, Statutory Instrument No. 200 of 1967, available on-line at <www.irishstatutebook.ie/eli/1967/si/200/made/en/print>. See also Gaeltacht Areas Order, 1974, Statutory Instrument No. 192 of 1974, available on-line at <www.irishstatutebook.ie/eli/1974/si/192/made/en/print>, and Gaeltacht Areas Order, 1982, Statutory Instrument No. 350 of 1982, available on-line at <www.irishstatutebook.ie/eli/1982/si/350/made/ga/print>.

³² Mr. Tom O’Donnell, Minister for the Gaeltacht in the period 1973-5: see P. Ó hAoláin, ‘Sustaining Minority Language Communities: Yin and Yang Juncture for Irish!’, in J. M. Kirk and D. P. Ó Baoill (eds.), *Sustaining Minority Language Communities: Northern Ireland, the Republic of Ireland, and Scotland* (Cló Ollscoil na Banríona, Belfast, 2011).

³³ Subsection 4(1), Gaeltacht Industries Act, 1957, No. 29 of 1957, available on-line at <www.irishstatutebook.ie/eli/1957/act/29/enacted/en/print.html>.

language in the Gaeltacht”.³⁴ Despite this latter duty, Gaeltarra Éireann was essentially an economic development agency, as is clear from the enumeration of its powers, which included expanding and developing in the Gaeltacht the rural industries and any industry or productive scheme of employment.³⁵

In 1980, Gaeltarra Éireann was dissolved and replaced by a new development body, Údarás na Gaeltachta,³⁶ One innovative aspect was that seven of the thirteen board members were elected by the people of the Gaeltacht, with the Chairman and five other members appointed by the Minister for the Gaeltacht.³⁷ The government sought to increase the salience of language planning for Irish by providing in the Údarás na Gaeltachta Act, 1979 that the first-recited functions of An tÚdarás were encouraging “the preservation and extension of the use of the Irish language as the principal medium of communication in the Gaeltacht”, and ensuring that “Irish is used to the greatest extent possible in the performance by it and on its behalf of its functions”.³⁸ Investment in and support of economic development remained central to the work of the new organisation: its functions also included carrying on, controlling and managing those industries and productive schemes of employment that had been within the remit of Gaeltarra Éireann, carrying on, controlling and managing other industries and productive schemes of employment that An tÚdarás sees fit, and expanding and developing any such industry or productive scheme of employment.³⁹ However, the legislation also suggested that “promoting the linguistic, cultural, social, physical and

³⁴ Subsection 4(2).

³⁵ Subsection 4(4).

³⁶ <www.udaras.ie>.

³⁷ Subsection 6(2), Part IV, Údarás na Gaeltachta Act, 1979, No. 5 of 1979, available on-line at <www.irishstatutebook.ie/eli/1979/act/5/enacted/en/print#sec8>. Membership of the board has been changed as a result of the Gaeltacht Act, 2012, discussed below; the number of members was reduced to 12, with the Chairperson and six ordinary members appointed by the Minister, with the remaining five members appointed by the Minister on the nomination of councillors by the county councils of Donegal (1), Mayo (1), Galway (1), Kerry (1), and Cork, Meath, and Waterford, in rotation (1): section 16.

³⁸ Subsection 8(1).

³⁹ Subsections 8(2)-(4).

economic development of the Gaeltacht” was also part of the functions of An tÚdarás,⁴⁰ and it describes its role in the following terms:

Údarás na Gaeltachta is the regional authority responsible for the economic, social and cultural development of the Gaeltacht. The overall objective of Údarás na Gaeltachta is to ensure that Irish remains the main communal language of the Gaeltacht and is passed on to future generations.

The authority endeavours to achieve that objective by funding and fostering a wide range of enterprise development and job creation initiatives and by supporting strategic language, cultural and community based activities.⁴¹

With respect to language legislation, the single most important development is the Official Languages Act, 2003,⁴² which sought to spell out for the first time the implications of the constitutional position of Irish as the national and first official language. The long title to the act provides that it is an act “to promote the use of the Irish language for official purposes in the state”, as well as providing for the use of both official languages, Irish and English, in the Irish Parliament, in the administration of justice, in communicating with or providing services to the public, and in carrying out the work of public bodies, among other things. The act creates very few rights, but those which are created conform to the personality principle, rather than being territorially limited in any way. Thus, the act provides that members of either house of the Oireachtas, the Irish Parliament, has the right to use either of the official languages in debates and proceedings in either House and in committees, and that persons appearing before either House or committee has the same right.⁴³ Similarly, with respect to the administration of justice, the act provides that a person may use either of the official languages in, or in any pleading in or document issuing from, any court in Ireland, and that the court must ensure that the person will not be placed at a disadvantage as a result of the person’s choice of official language.⁴⁴ Certain duties are placed on public bodies that

⁴⁰ Subsection 9(1).

⁴¹ <www.udaras.ie/en/faoin-udaras/ar-rol>.

⁴² No. 32 of 2003, available on-line at <www.irishstatutebook.ie/eli/2003/act/32/enacted/en/print.html>.

⁴³ Subsections 6(1) and 6(2).

⁴⁴ Subsections 8(1) and 8(2).

apply without any territorial limitation. For example, where a person corresponds with a public body in Irish, the public body must respond in Irish.⁴⁵ A general communication in writing or by e-mail by a public body to furnish information to the public must either be in Irish or in Irish and English.⁴⁶ A variety of documents made by public bodies must be published in both official languages simultaneously, including documents setting out public policy proposals, annual reports, audited accounts or financial statements, and certain strategy documents.⁴⁷ Certain oral announcements made by public bodies, headings of stationery of such bodies, and signage or advertising used by such bodies must either be in Irish or in Irish and English.⁴⁸

The more precise obligations of public bodies in relation to the Irish language were not, however, set out in the act; rather, the act created a mechanism, a system of language schemes, but which such obligations would be clarified. The mechanism was closely modelled on that created under the Welsh Language Act 1993.⁴⁹ The Official Languages Act 2003 provides that the Minister for Community, Rural and Gaeltacht Affairs may, “for the purpose of promoting the use of the Irish language for official purposes in the State”, require any public body listed in the First Schedule to the act to prepare a draft scheme for approval by the Minister specifying the services which the public body proposes to provide exclusively through the medium of Irish, exclusively through the medium of English, and through the medium of both Irish and English, and, the measure the body proposes to adopt to ensure that

⁴⁵ Subsection 9(2).

⁴⁶ Subsection 9(3).

⁴⁷ Section 10.

⁴⁸ Subsection 9(1), and the Official Languages Act 2003 (Section 9) Regulations 2008, S.I. No. 391 of 2008, available on-line at <www.irishstatutebook.ie/eli/2008/si/391/made/en/print>.

⁴⁹ The Welsh legislation has, as we shall see, also had a profound impact on the approach taken in Scotland, and could be said to be the prototype for a distinctively ‘Celtic’ model of language legislation. Space does not permit the analysis of the Welsh case, particularly as the 1993 legislation has been replaced by the Welsh Language (Wales) Measure 2011, a complex piece of legislation which develops a considerably different approach. Neither the older or this newer legislative approach makes explicit reference to territory, and aside from the limitation of the application of legislation to Wales, territoriality has played a less prominent role in legislation and policy than in Ireland, especially.

any services not provided in Irish will be so provided.⁵⁰ In preparing its draft scheme, the public body must have regard to any guidelines issued by the Minister, among other things.⁵¹ There are, however, special obligations imposed in relation to schemes of public bodies serving or based in the Gaeltacht. In particular, such a public body must ensure that the particular Irish language requirements associated with the provision of services in Gaeltacht areas are met, and that the Irish language becomes the working language in its offices in the Gaeltacht.⁵²

The Minister issued guidelines for the preparation of language schemes in September, 2004.⁵³ In addition to explaining the process by which draft schemes are to be prepared, the guidelines provide guidance on the structure and content of the schemes. Generally, the guidance is of general application. However, there are certain provisions relating specifically to the Gaeltacht, and we therefore once again see the application of territorially-specific provisions in the Irish legislative framework, reflecting the particular importance attached to the Gaeltacht. Thus, the Guidelines provide that the scheme of public bodies serving or having a presence in the Gaeltacht must “set out the steps to be taken to ensure that—over time, where this is not already the case—Irish becomes the **default** language of service delivery in the Gaeltacht” (emphasis in the original).⁵⁴ The Guidelines note that, in respect of offices in the Gaeltacht of public bodies, where Irish is not already the internal working language, public bodies must plan for Irish to become so over a period of time, and will therefore need to consider in their schemes: opportunities for existing staff to train or upskill their language competence; making the ability to work through Irish an essential requirement

⁵⁰ Subsection 11(1).

⁵¹ Paragraphs 13(2)(a) to (c). Subsection 12(1), the Minister is required to issue to public bodies guidelines in relation to the preparation by public bodies of draft schemes, and the Minister did so in 2004 (see below).

⁵² Paragraphs 13(2)(d) and (e).

⁵³ Department of Community, Rural and Gaeltacht Affairs, *Guidelines under Section 12 of the Official Languages Act 2003*, September 2004, available on-line at www.ahrrga.gov.ie/app/uploads/2015/07/Guidelines.pdf.

⁵⁴ Section 3.5.1, p. 26.

for any new staff; the need to ensure that instructions, manuals and other resource material are issued to offices in the Gaeltacht in the Irish language; and, that any circulars or other written instructions or resource materials issued to offices in the Gaeltacht by headquarters or central divisions of the public body that relate to service delivery be in Irish.⁵⁵ The Guidelines also provide that simultaneous interpretation services should be provided where it is not possible to run the meeting through the Irish language or where all speakers are not able to make presentations in Irish.⁵⁶

The Official Languages Act 2003 also gave the Minister the power to issue a ‘placenames order’ by which the Irish version of a placename can be designated for all official purposes.⁵⁷ The act also provides that where the Minister has issued a placename order in respect of a placename in a Gaeltacht area, the English language version of the placename shall no longer have any force and effect, meaning that the Irish language version becomes the sole official version.⁵⁸ To date, thirteen placenames orders have been issued, including one in respect of Gaeltacht areas.⁵⁹ The Guidelines for the preparation of language schemes also provide that the official Irish language name of Gaeltacht places should be used “as the default on any registers or databases”.⁶⁰

Since 2003, there has been much activity, including the roll-out of Irish language schemes under the Official Languages Act. Space does not permit an analysis of these schemes; however, as they are negotiated with individual public bodies, and as each one tends to contain different commitments in respect of service provision through the medium of Irish, it could be argued that, to the extent that the particular public body serves a limited

⁵⁵ Section 3.5.2, p. 27.

⁵⁶ Section 3.5.3, p. 28.

⁵⁷ Subsection 32(1).

⁵⁸ Subsection 33(2).

⁵⁹ An tOrdú Logainmneacha (Ceantair Ghaeltachta) 2004, available on-line at <www.ahrrga.gov.ie/app/uploads/2015/07/file4347en.pdf>. See, generally: <www.ahrrga.gov.ie/gaeltacht/the-irish-language/the-placenames-branch/placenames-orders>.

⁶⁰ *Supra*, note 53, subsection 3.5.4, p. 28.

territory—for example, a local council—the schemes involve a territorially-limited application of language policy and language obligations.⁶¹

With respect to other developments, three deserve particular mention in relation to the topic of this paper. The first is the December 2006 statement of the Government of Ireland on the Irish language.⁶² The statement set out a vision for the language, which made reference to increasing “on an incremental basis the use and knowledge of Irish as a community language”, but also to strengthening “the Gaeltacht as an Irish-speaking community”, among other objectives. The statement then listed thirteen objectives, most of them not territorially-limited in scope, but the fourth objective related specifically to the Gaeltacht, and provide that it would be given “special support as an Irish-speaking area”,

The broad objectives set out in the 2006 government statement were fleshed out in the second of the three more recent developments of relevance to this paper, the Government of Ireland’s twenty year strategy for the Irish language, covering the period 2010 to 2030.⁶³ It also contained a vision statement, in which the objective of the Government was described as increasing on an incremental basis the use and knowledge of Irish as a community language. However, it added the following:

It is an integral component of the Government’s Irish language policy that close attention be given to its place in the Gaeltacht, particularly in light of research which indicates that the language’s viability as a household and community language in the Gaeltacht is under threat.⁶⁴

⁶¹ It should be noted that significant concerns have been raised about the content and effectiveness of many of the Irish language schemes created under the Official Languages Act 2003, and there is a concern that they have in general not been particularly effective: see, for example, J. Walsh and W. McLeod, ‘An overcoat wrapped around an invisible man? Language legislation and language revitalisation in Ireland and Scotland’, 7:1 *Language Policy* (2008) 21-46; J. Walsh, ‘Language policy and language governance: A case-study of Irish language legislation’, 11:4 *Language Policy* (2012) 323-341; and, P. Ó Flatharta, ‘Language schemes—a useful policy tool for language planning?’, 16:4 *Current Issues in Language Planning* (2015) 378-391.

⁶² Rialtas na hÉireann / Government of Ireland, *Ráiteas I Leith na Gaeilge 2006 / Statement on the Irish Language*, December 2006, available on-line at www.taoiseach.gov.ie/eng/News/Archives/2006/Government_Press_Releases_2006/Ráiteas9.pdf.

⁶³ Government of Ireland, *20-Year Strategy for the Irish Language 2010-2030*, available on-line at www.ahrrga.gov.ie/app/uploads/2015/07/20-Year-Strategy-English-version.pdf.

⁶⁴ *Ibid*, p. 3. The reference is to the Comprehensive Linguistic Study, *supra*, note 10.

The vision statement then listed four other aims of Government policy, three of which were of general application throughout the state, but one of which made specific reference to providing linguistic support for the Gaeltacht as an Irish-speaking community. And while the overall thrust was to increase societal bilingualism, the following statement was also made:

... the Government also recognises that the focus of policy in the Gaeltacht needs to be on maintaining the linguistic identity of the community in the Gaeltacht as a distinctive language region, rather than one of bilingualism.⁶⁵

A number of specific objectives were set out with regard to increasing the number of people with a knowledge of Irish and the number of daily speakers of Irish in Ireland as a whole, but there was also a reference to increasing the number of speakers who speak Irish on a daily basis in the Gaeltacht by 25 per cent, “as its invigoration will be critical to the overall Strategy”.⁶⁶ Finally, more detailed proposals were set out in nine discrete areas for action, one of which focused exclusively on the Gaeltacht. These proposals, set out in Section 6.2 of the Strategy, began with the following statement:

The development of a comprehensive language planning system at community level in the Gaeltacht is central to the strategy that will be put in place to ensure that Irish survives as the community language in the Gaeltacht.⁶⁷

The strategy went on to propose that, in line with recommendations in the Comprehensive Linguistic Study of the Use of Irish in the Gaeltacht,⁶⁸ a new legal definition of the boundaries of the Gaeltacht based on linguistic criteria would be created under a new Gaeltacht Act. The strategy also committed the government to instigating a new language planning process under the new act whereby a language plan will be prepared at community level for each Gaeltacht district.⁶⁹ Although most of the other eight areas for action were of general application throughout the state, there were some measures relating specifically to the

⁶⁵ *Ibid.*

⁶⁶ *Ibid*, p. 9.

⁶⁷ *Ibid*, p. 19.

⁶⁸ *Supra*, note 10.

⁶⁹ *Ibid*, p. 20.

Gaeltacht, in particular in relation to education, in respect of which there was a subsection devoted to issues relating to education in the Gaeltacht.⁷⁰

The third development is the Gaeltacht Act 2012,⁷¹ which was created to implement at least some of the commitments in the 20-Year Strategy. The main purpose of the legislation was to give effect to the main provisions of the 20-Year Strategy relating to the Gaeltacht, and in particular to create a statutory language planning process to support the Irish language; it also changed the number of board members of Údarás na Gaeltachta and the manner of their selection, removing the direct election of some members.⁷² The legislation provides for the designation by the Minister of the existing Gaeltacht as a number of discrete ‘Gaeltacht Language Planning Areas’,⁷³ based on linguistic considerations, with language plans to be developed by a community organisation identified and assisted by Údarás na Gaeltacht, and agreed with the Minister. The Department of Arts, Heritage and the Gaeltacht has provided specific language planning guidelines for these purposes, and has set out in them the various Gaeltacht Language Planning Areas.

To conclude, we have seen that, in spite of the constitutional status of the Irish language as the sole ‘*national* language’ and ‘first official language’ for the whole of the state, the concept of territoriality, in the form of the special status given to the Gaeltacht, plays a central role in Irish legislation and policy. The importance of language maintenance and revitalisation in the Gaeltacht is consistently emphasised, and while some have been critical of the extent to which de facto language practices of the state adhere to these legal and policy pronouncements, the recognition given to the Gaeltacht as a territory of special importance to the language is quite explicit.

⁷⁰ *Ibid*, pp. 16-7.

⁷¹ No. 34 of 2012. Available on-line at <www.irishstatutebook.ie/eli/2012/act/34/enacted/en/print>.

⁷² See note 37, *supra*.

⁷³ Subsection 7(2).

5. Gaelic in Scotland

Aside from being closely related to Irish, Gaelic is, like Irish, associated with certain ‘heartlands’ which are located in relatively remote and mainly rural areas. However, there are also important differences. Gaelic is, as we have seen, spoken by a much smaller number of people, and by a much smaller percentage of the Scottish population. This is partly due to the ambiguous place of Gaelic in the national psyche; unlike Irish, which essentially all children in Ireland are exposed to in the primary and secondary school system, Gaelic is, outside of a tiny proportion of children in Gaelic-medium primary education, in effect not taught at all in the primary school system, and is available in only a limited number of schools in certain parts of the country as a subject at secondary school (with a very small percentage of Scottish secondary students studying the language). Another important contextual difference is that, unlike the Republic of Ireland, Scotland is not an independent state. A measure of territorial self-government was created as a result of the Scotland Act 1998, the legislation of the UK Parliament which created Scottish devolution, and which came into force in 1999. There was no reference to Gaelic in the Scotland Act 1998; however, most policy areas of relevance to the language, including education, were devolved to the Scottish Parliament. The Scottish Parliament is not, though, able to legislate on broadcasting—much emphasis in Gaelic development since the late 1980s has been put on Gaelic television broadcasting—and the Parliament is also unable to impose obligations, including in relation to language, on UK government departments and other institutions regulated by the UK Parliament. Thus, legislation and policy-making for Gaelic by the Scottish Parliament and the Scottish Government is territorially limited to Scotland.

Given that Gaelic has traditionally been associated with the Scottish Highlands and is, as noted, now associated most closely with the Western Isles/Outer Hebrides, Skye, Tiree, Islay and a few more locations in the Inner Hebrides, one would think that the concept of a

‘heartland’ such as the Irish Gaeltacht would similarly be central to legislation and policy in Scotland, but as we shall see, this is generally not the case, for reasons that have not been fully investigated. It may, however, be due to the fact that, as was also noted earlier, a large number of Gaelic speakers now live outside of those ‘heartlands’, and there has been a significant amount of activity in support of the language in places like Glasgow and Edinburgh. As a result, most of the present generation of Gaelic activists—the ones who have seen the development over the last thirty years or so of the current legislative and policy context—have sought to resist any attempt to limit the development of policy to the traditional ‘heartlands’. Ironically, because Gaelic is generally not conceived of by most Scots as being ‘the’ national language, and has arguably only recently been accepted as contributing in a significant way to Scotland’s national identity, it may be that those remaining ‘heartlands’ have not been invested with the same iconic status that the Irish Gaeltacht has generally been given in Ireland.

An earlier generation of activists did, however, embrace the idea that a territorially-defined ‘heartland’, a ‘Gàidhealtachd’ (essentially, the same word as Gaeltacht in Irish, meaning the Gaelic-speaking area), was relevant to policy. In a set of proposals for a National Gaelic Policy published in 1975 by An Comunn Gàidhealach, which was, for much of the twentieth century, the main Gaelic advocacy organisation, the concept of the Gàidhealtachd had a central place.⁷⁴ In the Introduction, we see the following:

It is at present impracticable and probably undesirable to impose a fully bi-lingual status on the whole of Scotland. The aim therefore must be to achieve perfect bi-lingualism in the Gaelic areas (the Gaidhealtachd) to promote and encourage the use of the language in what are now fringe areas (the Breac-Ghaidhealtachd) and to accord the language such status in the country as a whole as may be necessary to implement the fore-going and to provide adequate facilities for Gaels living outwith the Gaelic areas and for Non-Gaels who wish to learn and enjoy Gaelic.

⁷⁴ An Comunn Gaidhealach, *A Policy for Gaelic*, Paper No. 1 (Inverness, 1975).

In the proposals themselves, the ‘Gàidhealtachd’ and the ‘Breac-Ghàidhealtachd’ were specifically defined, with implications for the obligations imposed on governmental authorities. The ‘Gàidhealtachd’ contained most of the areas which would have been majority Gaelic-speaking areas at the time, including all of the Western Isles (Comhairle nan Eilean Siar, or ‘Comhairle nan Eilean’ as it was at the time) local authority area, certain districts within the Highland Council local authority region, including Skye and a number of districts on the mainland of the West Highlands, and the islands of Tiree, Coll, Jura, Colonsay and Islay, all of which are now in the Argyll and Bute local authority area. The ‘Breac-Ghàidhealtachd’ contained most of the rest of what is now called the Highlands, the large area in the north of Scotland in which Gaelic was widely spoken into the twentieth century, but from which it had largely disappeared, even by the 1970s.⁷⁵ Interestingly, Glasgow and Edinburgh, which, as today, did have large numbers of Gaelic-speakers, were omitted from this schema.

The first attempt to legislate for Gaelic came in 1980, when Donald Stewart, the Scottish National Party Member of the UK Parliament for the Western Isles, introduced a Gaelic (Miscellaneous Provisions) Bill into that Parliament;⁷⁶ however, the Bill never made it into law. Like the An Comunn Gàidhealach policy, though, it did incorporate a territorial approach to the language, again based on the idea of special provision for Gaelic-speaking areas. Section 1 of the Bill defined ‘Gaelic-speaking areas’ as the Highland Council, Western Isles Island Council, Argyllshire and the Inner Hebrides, and Perthshire.⁷⁷ This coincides more or less with the ‘Gàidhealtachd’ and ‘Breac-Ghàidhealtachd’ defined by An Comunn Gàidhealach. The two most important sections were section 2, relating to Gaelic education, and section 3, relating to the use of Gaelic in the courts. With respect to education, the Bill

⁷⁵ *Ibid*, pp. 5-6.

⁷⁶ 1980/81 Bill 24, House of Commons.

⁷⁷ Section 1.

imposed an obligation on the education authorities in the ‘Gaelic-speaking areas’ defined in section 1 of the Bill to provide education in Gaelic. With respect to the use of Gaelic in the courts, though, the Bill applied the personality principle: it provided that in any legal proceedings anywhere in Scotland, Gaelic could be spoken by any party, witness or other person who wishes to use it.⁷⁸

In 1984, a Gaelic development organisation, Comunn na Gàidhlig (CNAG), was created by the Highlands and Islands Development Board (HIDB, now Highlands and Islands Enterprise, HIE), an economic and social development body established by the UK government in the 1960s. In the mid-1990s, and inspired by the passage by the UK Parliament of the Welsh Language Act 1993, CNAG began campaigning for language legislation for Gaelic, and in 1997, produced a set of proposals.⁷⁹ These proposals did not make reference to the ‘Gàidhealtachd’, although they did recognise that local conditions, in terms of numbers and concentrations of speakers, varied greatly, and so when it came to the provision of certain public services through the medium of Gaelic, the proposals specified a higher level of obligation in local areas with larger percentages of Gaelic-speakers, an approach closer in spirit to that taken in the FCNM and ECRML.

The Scottish Executive (now the Scottish Government), which from 1999 to May 2003 was a coalition government involving the Scottish Labour Party and the Scottish Liberal Democrats, reacted to the proposals and the increasing agitation amongst Gaelic activists for legislation by appointing a taskforce to examine the issue, which reported in September,

⁷⁸ Current provision with respect to Gaelic in the courts does, however, take a territorial approach. At the time the UK ratified the ECRML, it had difficulty in designating any paragraph or subparagraph in the Article on the judicial system, because Gaelic was effectively not allowed to be used in any court except a specialist tribunal relating to land holding in the Highlands. As a result, three sheriff courts, the lowest court in Scotland, all in Skye and the Western Isles, were designated as ones in which Gaelic could be used in civil proceedings only.

⁷⁹ Comunn na Gàidhlig, *Inbhe Thèarainte dhan Ghàidhlig: Secure Status for Gaelic* (Inverness, 1997). These were presented to the UK Government, but with devolution in July 1999, it was considered appropriate effectively to repackage these proposals for submission to the newly-established Scottish Executive (not, the Scottish Government): Comunn na Gàidhlig, *Inbhe Thèarainte dhan Ghàidhlig — Dreach lùl airson Achd Gàidhlig/Secure Status for Gaelic — Draft brief for a Gaelic Language Act* (Inverness, 1999).

2000.⁸⁰ The Taskforce essentially resurrected the idea of a territorially-defined ‘Gàidhealtachd’ as a basis for policy and language planning—the report was relatively vague on the need for legislation. The ‘framework’ proposed for Gaelic development was based on the idea that ‘the Gaelic community’ had three “discrete, yet holistic, components”, the first being the ‘heartland’, “where the language is still vibrant but vulnerable”, the second being ‘the rest of the Gàidhealtachd’, “where Gaelic was once healthy but has declined more rapidly in recent years”, and the third being ‘the rest of Scotland and the diaspora’, which “includes cities and towns with strong Gaelic communities”.⁸¹ Among the recommendations was the creation of a ‘Gaelic Development Agency’ to guide policy and planning, which would, among other things, “concentrate the management of Gaelic activities in locations in the Gaelic heartland, with appropriate distribution to accommodate “energy centres” and the language’s national disposition”.⁸² The Taskforce report met with some criticism, particularly in relation to the emphasis placed on the notion of focusing policy on a Gaelic ‘heartland’.⁸³ The Scottish Executive appointed a second body, the Ministerial Advisory Group on Gaelic (MAGOG) for the purposes of further developing the Taskforce proposals, but in their 2002 report,⁸⁴ MAGOG had generally moved away from the concept of a ‘heartland’ as being central to policy; they were also clearer in highlighting the need for legislation, and the recommendations led to the establishment in 2003 of a language planning body, Bòrd na Gàidhlig (Alba).

⁸⁰ Scottish Executive, *Ag Ath-Bheòthachadh Gàidhlig—Neamhnuid Nàiseanta / Revitalising Gaelic—A National Asset: Report of the Taskforce on Public Funding of Gaelic* (The Scottish Executive, Edinburgh, 2000).

⁸¹ *Ibid*, p. 14.

⁸² *Ibid*, p. 5.

⁸³ See, for example, A. MacCaluim, with W. McLeod, *Revitalising Gaelic? A Critical Analysis of the Report of the Taskforce on Public Funding of Gaelic* (Department of Celtic and Scottish Studies, University of Edinburgh, Edinburgh, 2001).

⁸⁴ Buidheann Comhairleachaidh an Riaghaltais air Gàidhlig / Ministerial Advisory Group on Gaelic, *Cothrom Ùr don Ghàidhlig / A Fresh Start for Gaelic* (The Scottish Executive, Edinburgh, 2002).

The Scottish Government was not, however, willing, at least in the first instance, to act on the recommendation that there should be a Gaelic language act, with the result that in late 2002, Michael Russell, a Scottish National Party (SNP) member of the Scottish Parliament, introduced a Gaelic Language (Scotland) Bill from the opposition benches.⁸⁵ Inspired to a considerable extent by the Welsh Language Act 1993 (and similar to the Irish Official Languages Act 2003 and, as we shall see, the language legislation which the Scottish Parliament ultimately did enact, in 2005, the Gaelic Language (Scotland) Act 2005), the centrepiece of this bill were ‘Gaelic language plans’, which would have to be published by certain public bodies within two years of the bill coming into force, setting out the measures that the public body would take as to the use of Gaelic in connection with the public body’s functions, for the purpose of giving effect “so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the exercise of functions by public bodies the Gaelic and English would be treated on a basis of equality”.⁸⁶ Significantly, only certain public bodies would be required to produce these plans, namely those exercising any of their functions in the local government areas of Highland, Western Isles, and part of Argyll and Bute.⁸⁷ This is an area which roughly coincides with the area—the Scottish Highlands—in which Gaelic was widely spoken until the twentieth century, and with An Comunn Gàidhealach’s ‘Breac-Ghàidhealtachd; thus, the concept of the ‘Gàidhealtachd’, while not explicitly mentioned, was effectively being revived.

In the 2003 Scottish Parliamentary elections, three of the four largest parties, Scottish Labour, the Scottish Liberal Democrats, and the SNP all committed to enacting a Gaelic language act, and the Scottish Executive—again comprised of a Labour-Liberal Democrat coalition—introduced a bill in 2004, which was ultimately passed without opposition in the

⁸⁵ SP Bill 69, Session 1 (2002).

⁸⁶ Subsections 1(2) and 1(3).

⁸⁷ Subsection 6(1), and subsection 3(1).

Scottish Parliament in 2005. This legislation, the Gaelic Language (Scotland) Act 2005 (the ‘Gaelic Act’),⁸⁸ is still the only significant language legislation for Gaelic, and unlike Michael Russell’s bill, eschewed the idea of a ‘Gàidhealtachd’ or a ‘heartland’ altogether. The Gaelic Act followed closely the Welsh Language Act 1993, which, as we have seen, also had an important impact on the Irish Official Languages Act 2003. Like the Welsh Act, but unlike the Official Languages Act, the Gaelic Act created a language planning body, Bòrd na Gàidhlig, to play a central role in the development of the language. Among its functions is promoting, and facilitating the promotion of the use and understanding of Gaelic, and of Gaelic education and Gaelic culture more generally.⁸⁹ The act then requires the functions conferred on the Bòrd to be exercised “with a view to securing the status of the Gaelic language *as an official language of Scotland* commanding equal respect to the English language” (emphasis added), through, among other things, increasing the number of persons who are able to use and understand Gaelic, encouraging the use and understanding of Gaelic, and “facilitating access, *in Scotland and elsewhere*, to the Gaelic language and Gaelic culture” (emphasis added).⁹⁰ Three things are notable for our purposes. First, Gaelic is described as an official language ‘of Scotland’; though this status is territorially limited to Scotland, it is not limited to any particular part of the country, including any ‘heartland’. Second, the functions of the Bòrd are to be exercised without qualification, and not limited to any particular territory within Scotland, nor is any special obligation created in respect of any ‘heartland’. Third, where special reference is made to the territory in which a function is to be exercised, the reference is to doing so ‘in Scotland and elsewhere’; again, there is no limitation to any ‘heartland’.

⁸⁸ 2005 asp 7.

⁸⁹ Subsection 1(2).

⁹⁰ Subsection 1(3).

One of the Bòrd's main duties is to prepare and submit to the Scottish Executive (now the Scottish Government) a '*national* Gaelic language plan' (emphasis added), both within a year of the act coming into force and every five years thereafter, which strategy must include a strategy for promoting, and facilitating the promotion of the use and understanding of the Gaelic language, and of Gaelic education and Gaelic culture.⁹¹ Once again, the plan is to be national—that is, Scotland-wide—in scope, and while its scope therefore territorially-linked, there is no reference to any 'heartland'. The other major feature is the power given to the Bòrd to require public authorities to prepare a Gaelic language plan which sets out the measures the public authority will take in relation to the use by it of Gaelic both in serving the public and in its internal operations.⁹² Like the Irish language schemes under the Official Languages Act 2003, this provision is based on the Welsh Act. There are two aspects which are linked to territory. First, the Bòrd can only issue notices to a 'Scottish public authority'⁹³ amongst other Scottish institutions; therefore, it cannot regulate language policy and practices of departments and agencies of the UK government which exercise their functions in Scotland. As noted earlier, this is due to the nature of Scottish devolution: under the Scotland Act 1998, the Scottish Parliament has no power to regulate UK-wide bodies. Second, in deciding whether to issue a notice to a public authority, the Bòrd must have regard to a number of things, including the extent to which the Gaelic language is used by persons served by the public authority and who work in the authority, and the potential for the authority to develop the use of Gaelic in relation to the use of Gaelic with such persons.⁹⁴ While this provision does not make explicit reference to territory, it does imply, and has been interpreted by the Bòrd, that public authorities serving areas which have larger numbers or concentrations of Gaelic-speakers should be prioritised; in practice, the Bòrd issued notices

⁹¹ Subsections 2(1) and 2(2).

⁹² Subsections 3(1), 3(4), and 10(4).

⁹³ Subsection 10(2).

⁹⁴ Subsection 3(3).

very early to local authorities associated with the ‘heartlands’, present or past—those for the Western Isles, Highland, and Argyll and Bute—but also to Glasgow and Edinburgh.

Public authorities must have regard to a number of things in preparing their Gaelic language plans, including the most recent national Gaelic language plan and any guidance given by the Scottish Executive or the Bòrd.⁹⁵ The Bòrd prepared such guidance (the ‘Guidance’) in 2007.⁹⁶ The Bòrd recognised that, because of the demographic situation of the language, discussed earlier, and the differing levels of preparedness of public authorities in Scotland with respect to the provision of public services through the medium of Gaelic—for example, only two local authorities, those of the Western Isles and Highland, had any sort of Gaelic policy at the time—a flexible approach to Gaelic development in general, and for Gaelic language plans was necessary, although their “long-term vision” was that the “substantial majority” of public authorities in Scotland would have a plan, and that the level of Gaelic provision provided by them would increase incrementally over time.⁹⁷ With regard to issuing notices to public authorities, the Bòrd indicated that it would prioritise those public bodies serving areas of the country “where use of the language in everyday life is more commonplace”, because there are larger numbers, percentages and concentrations of speakers in such areas.⁹⁸ With regard to the core commitments of a plan, the Bòrd indicated the following:

The Bòrd recognises that Gaelic Language Plans will differ depending on the functions of individual public authorities and *where they operate in Scotland*, and in terms of the number of Gaelic speakers and the potential for the development of Gaelic in their area.⁹⁹

⁹⁵ Subsection 3(5). The Bòrd is required to prepare such guidance under section 8, and although no timescale for its preparation is set out, the guidance must be approved by the Scottish Government.

⁹⁶ Bòrd na Gàidhlig, *Stiùireadh air Deasachadh Phlanaichean Gàidhlig / Guidance on the Development of Gaelic Language Plans* (Inbhir Nis / Inverness, 2007).

⁹⁷ *Ibid.*, p. 5.

⁹⁸ *Ibid.*, p. 9.

⁹⁹ *Ibid.*

The Bòrd then noted that they had four broad categories of expected Gaelic language provision to the public. The first category included public authorities operating in areas where “persons who understand, speak, read or write Gaelic form a majority of the population”, and the expectation is that these public authorities would identify a comprehensive range of commitments and would work towards full bilingual service provision and the broad use of Gaelic within the organisation “within a reasonable timescale”. Given the demographic threshold, while not explicitly saying so, this category was aimed at organisations such as the Western Isles local authority, working in the ‘heartlands’. The second category included public authorities operating in areas which include districts in which Gaelic-speakers constituted a local majority; the public authority should work towards full bilingual service provision in offices and units based in those districts. This category was aimed at organisations such as the local authorities for Highland or Argyll and Bute, or arguably national organisations, such as the Scottish Government itself, serving places like the Isle of Skye, where Gaelic-speakers form a majority in some parts of the island. The third category included public authorities operating in areas which include districts in which Gaelic-speakers do not form a majority, “but are present in significant numbers or percentages or in significant concentrations”; the public authority should work towards “providing services in Gaelic which those speakers are more likely to access”. While likely aimed at organisations providing services in areas of the Highlands, it could arguably include those providing services in places like Glasgow or Edinburgh. The fourth category included public authorities working in other areas.¹⁰⁰ Thus, while the Bòrd has not developed a ‘Gaeltacht’ concept or policy of the sort we see in Ireland, it has developed a territorially sensitive approach to the roll-out and contents of Gaelic language plans.

¹⁰⁰ *Ibid*, pp. 20-21.

With regard to the national Gaelic language plan, the Bòrd has now produced two such plans, the first covering the period 2007-2012,¹⁰¹ and the second covering the period 2012-2017.¹⁰² Unlike the Irish government's 20-Year Strategy, both national plans make no reference to the 'heartlands' or the 'Gàidhealtachd'. In the first national plans, targets for things like the increase in numbers of speakers, adult learners and children in Gaelic-medium education were set at a national level only. The same was true for things like more specific strategies for language acquisition; indeed, it proposed the development of a "National Gaelic Education Steering Group" and included in the plan a "National Gaelic Education Strategy". Only in respect of policies for developing language usage did the Bòrd focus on particular places, hinting at a more territorial approach. For example, the Bòrd claimed that "[t]he most valuable resource we have is the communities where Gaelic is spoken and is still used in a range of everyday situations"; however, even here, while recognising the importance of Gaelic in such 'heartland' communities—a term the Bòrd did not use—they committed to promoting the increased use of, and confidence in, Gaelic "in *all* communities" (emphasis added).¹⁰³ With regard to Gaelic language plans, the Bòrd set out essentially the same approach that they took in the Guidance on preparation of Gaelic language plans.¹⁰⁴ In general, however, the strategy with respect to Gaelic usage and status planning was conceived of without reference to particular geographic areas of the country, and in national terms. The second national plan took a somewhat different approach, outlining the Bòrd's strategy for different 'development areas', including Gaelic in the home and early years, education, communities, the workplace, arts and media and heritage and tourism, and Gaelic corpus planning. Only in respect of communities and the workplace did the Bòrd make

¹⁰¹ Bòrd na Gàidhlig, *Plana Nàiseanta na Gàidhlig 2007-2012 / The National Plan For Gaelic 2007-2012* (Inbhir Nis / Inverness, 2007).

¹⁰² Bòrd na Gàidhlig, *Plana Cànnain Nàiseanta Gàidhlig 2012-2017: Fàs & Feabhas / National Gaelic Language Plan 2012-2017: Growth & Improvement* (Inbhir Nis / Inverness, 2012).

¹⁰³ *Supra*, note 101, p. 23.

¹⁰⁴ *Ibid*, pp. 30-31.

specific reference to particular geographic territories, and again did not explicitly refer to concepts such as the ‘heartlands’ of the language or the ‘Gàidhealtachd’. With respect to communities, for example, the strategy for communities where 20 per cent or more of the population had Gaelic abilities (that is, could speak, understand, read or write it), was that “Gaelic’s use should be strengthened by means of the provision by public authorities of bilingual services”, and in other areas with significant concentrations of Gaelic-speakers, that support would be made available “for a wide range of community initiatives to promote the learning and use of Gaelic”.¹⁰⁵ With regard to Gaelic in the workplace, the strategy made reference to “sustaining and enhancing Gaelic vitality in workplaces, particularly in areas where Gaelic is spoken by 20 per cent or more of people in the community served”.¹⁰⁶

Thus, while the concept of territoriality is present in contemporary Gaelic legislation and policy, the concept of a linguistic ‘heartland’ and of the ‘Gàidhealtachd’ is generally not present, in contrast to earlier periods, when such concepts did have some traction. Where particular territories are recognised, it is primarily because of practical considerations, relating to the demographic realities of the language at present. Only in the first national plan was reference made to the particular importance of such areas.

6. Conclusions

As has already been noted, Irish and Scottish Gaelic are in some respects similar: they are closely related languages, they have been in significant decline for a long period of time, and they are only spoken widely and used as a means of communication in daily life in certain relatively isolated pockets within the country. There are also important differences: Irish is claimed to be spoken by much larger numbers of people, has a completely different and much

¹⁰⁵ *Supra*, note 102, p. 30.

¹⁰⁶ *Ibid*, p. 34.

larger position in the education system, and has much stronger recognition both amongst the public and policy makers as being the sole language that was once spoken over the entirety of the country.

Both languages have received recognition in national legislation—and in the case of Irish, the national constitution—as being official languages of the nation as a whole, although Irish is also recognised as the sole ‘national language’ of Ireland. In international law, Irish has generally not been treated by Ireland as ‘minority’ language, partly due to its domestic legal position, whereas the UK has recognised Gaelic as a minority language in need of protection on that basis. This reflects different ideologies concerning the nature of the languages as component parts of the national identity. However, and perhaps ironically, the Irish-speaking ‘heartland’ receives much greater recognition, through the concept of the ‘Gaeltacht’, than is the case in respect of the Gaelic-speaking ‘heartlands’ in Scotland. In Scotland, territorial considerations do play a role in policy and, implicitly at least, in legislation, but this is based largely on practical considerations relating to the much greater possibility of providing higher levels of services through Gaelic in areas in which the language is widely spoken. In only the first national Gaelic language plan of Bòrd na Gàidhlig were the ‘heartland’ communities referred to as ‘the most valuable resource’ for the future of the language; by contrast, the recognition of the special nature of such communities in Ireland as a valuable resource for the language, both in practical and in ideological terms, is central to legislation and policy. Ironically, this is a reflection of the special place attached to Irish in the identity of the Irish nation, and helps to explain the differences in approach with Scotland, where Gaelic is not generally conceived of in similar terms.